IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9432 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GB CORPORATION, THROUGH PROPRIETOR BABUBHAI A PATEL
Versus
JK SYNTHETICS LIMITED AND OTHERS

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Appearance :
MR CJ VIN for the Petitioner

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 18/04/2007

ORAL JUDGMENT

1. The petitioner – original plaintiff is before this Court being aggrieved by order passed by the learned Principal Senior Civil Judge, Surat below Exhs.14 and 68 filed in Special Civil Suit No.250 of 2005 dated

22.03.2007. The operative part of the order reads as under:

> "Application at Exh.68 is partly granted.
>
> This suit is stayed under the provisions of Section 8 of the Arbitration and Conciliation Act, 1996.
>
> Application at Exh.14 is disposed of accordingly.
>
> No order as to costs."

Exh.68 was filed by the defendant praying that:

> "(2) The defendants, therefore, pray that:
>
> (a) this suit may be dismissed, or in the alternative, may be stayed under the provisions of Sec. 8 of Arbitration & Conciliation Act, 1996;
>
> (b) Any other and better relief/s which this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case, be granted."

2. The order under challenge specifically refers that the order is passed below Exhs.14 and 68. The petitioner before this Court did not think it proper to produce Exh.14 on the record of the case.

While the matter was heard, the Court asked the learned Advocate to make available a copy of Exh.14 for perusal. The learned Advocate made available the same

which is taken on record. Prayers made in Exh.14 read as under:

> (6) The defendants, therefore, pray that ::
>
> (a)the suit may please be rejected under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, **or in the alternative, be suspended until the consent of the Board is obtained by the plaintiff**;
>
> (b)Any other and better relief/s which this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case, be granted."

3. Paragraph Nos.3 and 4 of Exh.14 reads as under:

> "(3) That, the defendant No. 1 Co. had made a reference to the Board for Industrial and Financial Reconstruction established under Sec. 4 of the Act. The reference was duly registered at Sr. No. 22 of 1998. The Bench was constituted wherein the Bench formed an opinion that the Co. cannot revive on its own, and that, it is necessary in the public interest to take measures specified U/s 18 of the Act, and the Bench issued necessary directions and measures on 02-04-1998. The xerox copy of the summary record of the proceedings of the hearing held on 02.04.1998 is produced herewith.
>
> (4) Under the above circumstances, **Sec. 22 of the Act comes into play. Therefore, the suit cannot be proceeded on account of bar laid down under Sec. 22 of the Act. It is pertinent to note that, under**

> **Sec. 22 of the Act, no suit for recovery of money or for the enforcement of any security against the industrial Company or of any guarantee in respect of any loans or advances granted to the industrial Co. shall lie or be proceeded with further except with the consent of the Board. The plaintiff has not obtained any consent of the Board.**"

4. Mr.Vin, learned Advocate for the petitioner vehemently assailed order dated 22.03.2007 saying that, 'the learned Judge has committed an error in allowing Exh.68 partly'. He submitted that the learned Judge has further erred and erred grossly, 'by staying the suit under the provisions of Section 8 of the Arbitration and Conciliation Act, 1996' (for short, "the Act"). In support of his submission, he relied upon the provisions of Section 8 of the Act. The learned Advocate submitted that, 'Section 8 of the Act does not provide for staying of suit'. He submitted that, 'the learned Judge has no power under Section 8 of the Act to stay the suit and therefore, the order, on the fact of it, is passed dehors the provisions of law'. For ready perusal, Section 8 of the Act is reproduced:

> "8. **Power to refer parties to arbitration where there is an arbitration agreement**.-(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later

than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) ......

(3) ......”

The learned Advocate submitted that, 'there is no provision, whereby the suit can be stayed while making a reference under Section 8 of the Act.

The learned Advocate is right in his submissions so far as provisions of Section 8 of the Act are concerned. But, the learned Advocate did not point out to this Court the relevant discussion made by the learned Judge in paragraph No.3 of the order. Paragraph No.3 of the order reads as under:

“3. After hearing both the sides and looking to the facts and circumstances of this case, according to the defendants, the defendants learned advocate Shri J.J.Gandhi argued that the defendants are the sick units and plaintiff has relied upon the agreement dtd.08-07-1996 executed by and between the plaintiff and defendant No.1. Moreover, it is argued that the same sale agreement, unless amicably settled between the parties within 15 days, it be referred to Single Arbitrator in case the parties agree upon, and therefore, the suit cannot be proceeded against the defendants and it is hit by Section 8 of the Arbitration and Conciliation Act, 1996. Moreover,

learned advocate Shri J.J.Gandhi argued that the defendants No.1 Company had made a reference to the Board for Industrial and Financial Reconstruction established under Section 4 of the Act: The reference was duly registered at Serial No.22 of 1998. The Bench was constituted wherein the Bench formed an opinion that the Company cannot revive on its own, and that it is necessary in the public interest to take measures specified under Section 18 of the Act, and the Bench issued necessary directions and measures on 02-04-1998: The xerox copy of the summary record of the proceedings of the hearing held on 02-04-1998 is produced. In this way, due to the argument of learned advocate Shri J.J.Gandhi, at this stage, the reference is made before the Board for Industrial and Financial Reconstruction, under Section 4 of the Act, and so, Section 22 of the Act comes into play. Therefore, the suit cannot be proceeded on account of bar laid down under Section 22 of the Act. So, no suit for recovery of money against the industrial company shall be proceeded."

5. In sum and substance, the learned Principal Senior Civil Judge has committed an error in mentioning the number of the exhibits. Instead of Exh.14, he mentioned Exh.68 and instead of mentioning provisions of Section 22 of the Act, he mentioned provisions of Section 8 of the Act.

6. The learned Advocate ought to have invited the attention of the Court to this technical error. If he

pointed out that it is Exh.14 and not Exh.68 which is allowed and the suit is stayed in view of provisions of Section 22 of the other Act and not Section 8 of the Arbitration and Conciliation Act, 1996, it would have been appropriate. The learned Advocate submitted that, 'he read the order as it is and did not deem it fit to invite the attention of the Court to the aforesaid position.

7. In view of the aforesaid discussion, this Court is of the opinion that, 'this is an ill-design on the part of the petitioner to **steal** an order from the Court without pointing out the substance of the order by taking advantage of the technical irregularity which crept in the operative part of the order'. The learned Judge has mentioned Exh.68 instead of Exh.14 and has not referred to Section 22 of the other Act and has referred to Section 8 of the Arbitration and Conciliation Act, 1996. The order be so read.

In the result, the petition is dismissed. It is dismissed with cost of Rs.15,000/- (Rupees Fifteen Thousand Only).

(RAVI R.TRIPATHI, J.)

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